

Office of Chief Counsel
Internal Revenue Service
memorandum

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WTDerrick

date: January 14, 2003

to: [REDACTED], International Team Manager (LM:CTM:[REDACTED])

from: Associate Area Counsel (LMSB), Chicago

subject: [REDACTED]
Allocation/Appportionment of Research & Experimental Expenses

This memorandum addresses several questions you had regarding the allocation and apportionment of research & experimental expenses (R&E expenses). This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This memorandum may contain privileged information. Any unauthorized disclosure of this memorandum may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

QUESTIONS

1. Under § 925(a)(2), did [REDACTED] overstate combined taxable income from the sale of export property for [REDACTED] through [REDACTED] by not allocating and apportioning to such combined taxable income the following R&E expenses:

a. the R&E expenses incurred solely to meet legal requirements imposed by the United States for purposes not reasonably expected to generate gross income outside the United States according to the legally mandated rules under Treas. Reg. § 1.861-17(a)(4) for [REDACTED] and under similar applicable provisions for [REDACTED] and [REDACTED] (legally mandated R&E expenses);

b. the non-legally mandated R&E expenses to the extent of [REDACTED]'s cost-sharing payment attributable to R&E expenses under § 936(h)(5)(C)(i); and

c. the non-legally mandated R&E expenses to the extent of [REDACTED]'s share of the profit-split amount under §

936(h)(5)(C)(ii)?

2. Did [REDACTED] overstate foreign source income from the sale of export property for [REDACTED] through [REDACTED] when in applying the rules regarding limitations on foreign source income set forth in § 927(e)(1), it increased combined taxable income from the sale of such export property to the extent of the non-legally mandated R&E expenses apportioned to United States sources in accordance with the exclusive geographic apportionment rules under Treas. Reg. § 1.861-17(b)(1)(ii) for [REDACTED] and under similar applicable provisions for [REDACTED] and [REDACTED]?

3. For [REDACTED] and [REDACTED], was [REDACTED] required to allocate and apportion R&E expenses by SIC code for purposes of computing combined taxable income under § 925(a)(2) and for purposes of computing the foreign tax credit limitation under § 904(a), or was [REDACTED] authorized to compute combined taxable income and the foreign tax credit limitation as if such expenses related to no specific SIC code under Treas. Reg. § 1.861-8(e)(3)(i)(A)?

CONCLUSIONS

1. Under § 925(a)(2), [REDACTED] overstated combined taxable income from the sale of export property for [REDACTED] through [REDACTED] by not allocating and apportioning to such combined taxable income the following R&E expenses:

a. Legally mandated R&E expenses allocated to U.S. sources. This is so because the legally mandated rules are applicable for purposes of computing combined taxable income. The general allocation rules require an allocation of R&E expenses based on product categories. See Treas. Reg. Treas. Reg. § 1.861-17(a)(1), (a)(2). The legally mandated rules require another special allocation, within each product category, based upon geographic source. See Treas. Reg. § 1.861-17(a)(4).

b. In part, the non-legally mandated R&E expenses related to [REDACTED]'s cost-sharing payment under § 936(h)(5)(C)(i). For purposes of the allocation and apportionment rules, the R&E expenses to be allocated and apportioned are reduced by the amount of the R&E expenses included in the cost-sharing amount, see Treas. Reg. § 1.861-17(a)(3)(i)(B), but the R&E expenses must be reduced in proportion to all types of R&E expenses, including legally mandated expenses. Since it did not allocate any legally mandated R&E expenses to foreign trade income with a U.S. source, [REDACTED] overstated combined taxable income by reducing only non-legally mandated R&E expenses.

c. Non-legally mandated R&E expenses to the extent of [REDACTED]'s share of the profit-split amount under § 936(h)(5)(C)(ii). There is no authority for excluding these expenses from the computation of combined taxable income, such as a counter part provision to the cost-sharing provisions in Treas. Reg. § 1.861-17(a)(3)(i)(B).

2. Combined taxable income computed under § 925(a)(2) should not be modified prior to applying the rules under § 927(e)(1). See Treas. Reg. § 1.927(e)-(1). Under the special sourcing rule in § 927(e)(1), the amount of foreign source income on the sale of export property may not exceed the amount that would result if the corresponding DISC pricing rule applied. See I.R.C. § 927(e)(1); Treas. Reg. § 1.927(e)-(1)(b), example 1(ii). Under § 927(e)(1), combined taxable income is computed in the same way for FSC and DISC purposes. See Treas. Reg. § 1.927(e)-(3). Thus, in applying the rules under § 927(e)(1), [REDACTED] overstated foreign source income from the sale of export property for [REDACTED] through [REDACTED] by increasing such property's combined taxable income to the extent of the non-legally mandated R&E expenses apportioned to United States sources in accordance with the exclusive geographic apportionment rules under Treas. Reg. § 1.861-17(b)(1)(ii) for [REDACTED] and under similar applicable provisions for [REDACTED] and [REDACTED]. See Rev. Rul. 86-144, 1986-2 C.B. at 102; see also St. Jude Medical, Inc. v. Commissioner, 34 F.3d 1394, 1403 (8th Cir. 1994) (rules providing for exclusive geographic apportionment of R&E expenses do not apply for the DISC provisions).

3. For [REDACTED] and [REDACTED], [REDACTED] must allocate and apportion R&E expenses by SIC code for purposes of computing combined taxable income under § 925(a)(2) and for purposes of computing the foreign tax credit limitation under § 904(a). See Treas. Reg. § 1.861-8(e)(3)(i)(A).

FACTS

[REDACTED] is a domestic corporation with headquarters in [REDACTED]. It is in the business of [REDACTED].

[REDACTED]. It is the parent of [REDACTED], a foreign corporation that qualifies as a FSC under § 922. [REDACTED] is also the parent of [REDACTED], a domestic corporation that elected the application of § 936. Under § 936(h), [REDACTED] elected the cost-sharing method for sales of export property and elected the profit-split method for sales of other property. For purposes of this memorandum, all income and R&E expenses will pertain to the same product category, or SIC code, unless

otherwise stated.

During [REDACTED] through [REDACTED], the years in question, [REDACTED] incurred R&E expenses. It performed most of the R&E activities in the United States. According to [REDACTED], it incurred a significant portion of the R&E expenses solely to meet legal requirements imposed by the United States for purposes not reasonably expected to generate gross income outside the United States. [REDACTED], a calendar-year taxpayer, elected the application of Treas. Reg. § 1.861-17 for its taxable year [REDACTED] for purposes of allocating and apportioning R&E expenses. See Treas. Reg. § 1.861-17(g). For purposes of this memorandum we will assume that at least some portion of the R&E expenses were legally mandated expenses, but we encourage you to examine whether the R&E expenses in fact met the requirements of Treas. Reg. § 1.861-17(a)(4) for [REDACTED] and under similar applicable provisions for [REDACTED] and [REDACTED].

[REDACTED] used [REDACTED] as a commission agent for the sale of export property. This included the sale of export property purchased from [REDACTED]. For these sales, [REDACTED] and [REDACTED] determined [REDACTED]'s commission income based upon the transfer pricing rule in § 925(a)(2) (the combined taxable income method). Under the combined taxable income method, [REDACTED] determined combined taxable income without reducing such income by [REDACTED]'s R&E expenses falling within the following categories:

1. the R&E expenses incurred solely to meet legal requirements imposed by the United States for purposes not reasonably expected to generate gross income outside the United States according to the legally mandated rules under Treas. Reg. § 1.861-17(a)(4) for [REDACTED] and under similar applicable provisions for [REDACTED] and [REDACTED] (legally mandated R&E expenses);
2. the non-legally mandated R&E expenses to the extent of [REDACTED]'s cost-sharing payment attributable to R&E expenses under § 936(h)(5)(C)(i);
3. the non-legally mandated R&E expenses to the extent of [REDACTED]'s share of the profit-split amount under § 936(h)(5)(C)(ii); and
4. the R&E expenses apportioned to income not attributable to the sale of export property (on the basis of gross income according to the apportionment rules under Treas. Reg. § 1.861-17(d) for [REDACTED] or under similar applicable provisions for [REDACTED] and [REDACTED]).

The sale of export property also generated foreign source income for [REDACTED]. For purposes of the foreign tax credit limitation under § 904(a), [REDACTED] took into account the rules regarding the limitation on foreign source income under § 927(e)(1). In applying the rules under § 927(e)(1), [REDACTED] increased combined taxable income to the extent of the non-legally mandated R&E expenses apportioned to United States sources in accordance with the exclusive geographic apportionment rules under Treas. Reg. § 1.861-17(b)(1)(ii) for [REDACTED] and under similar allegedly applicable provisions for [REDACTED] and [REDACTED].

For § 936 purposes, [REDACTED] allocated and apportioned R&E expenses according to SIC codes for [REDACTED] through [REDACTED]. For FSC and foreign tax credit purposes, it allocated and apportioned R&E expenses according to SIC codes for [REDACTED] but not for [REDACTED] and [REDACTED].

DISCUSSION

The discussion below addresses whether [REDACTED] overstated combined taxable income for purposes of the FSC transfer pricing rules by not reducing combined taxable income in the amount of certain R&E expenses and by failing to allocate and apportion some of the R&E expenses on the basis of a SIC code. The discussion also addresses whether [REDACTED] improperly inflated foreign source income on the sale of export property for purposes of the foreign tax credit by modifying combined taxable income before applying the rules that limit such foreign source. For the reasons discussed below, [REDACTED] improperly computed both combined taxable income and foreign source income.

The Special Allocation Rules for Legally Mandated R&E Expenses Apply in the Computation of Combined Taxable Income for FSC Purposes.

In the case of a commission FSC, the FSC is exempt from U.S. taxation on a certain percent of the commission it earns on the sale of export property. See I.R.C. §§ 921(a), 932(a)(1)-(3), and 924(a). The exempt percent depends on whether the commission income is determined with or without regard for the administrative pricing methods. See I.R.C. § 923 (a)(1)-(a)(3). The FSC is entitled to earn a commission on the sale of export property under the section 482 method or one of two administrative pricing methods, which are the gross receipts method and the combined taxable income method. See Treas. Reg. § 1.925(a)-1T(d)(2)(ii); Treas. Reg. § 1.925(a)-1T(c); I.R.C. § 925(a) and (b). In this case, [REDACTED]'s commission was computed under the combined taxable income method.

The combined taxable income method allows the FSC to earn a commission equal to twenty-three percent of the combined taxable income of the FSC and its related supplier on the sale of the export property plus the FSC's total costs for the transaction. See Treas. Reg. § 1.925(a)-1T(d)(2). Combined taxable income is the excess of the related supplier's gross receipts from the sale of export property that would have been foreign trading gross receipts had the sale been made by the FSC directly over the related supplier's cost of goods sold and the related supplier's and FSC's other costs. See Treas. Reg. § 1.925(a)-1T(d)(2)(iii). The question here is what "other costs" should have been included in the computation of combined taxable income.

For purposes of combined taxable income, the regulations under § 925 provide the following rules regarding these other costs:

Costs (other than cost of goods sold) which shall be treated as relating to gross receipts from sales of export property are the expenses, losses, and deductions definitely related, and therefore allocated and apportioned thereto, and a ratable part of any other expenses, losses, or deductions which are definitely related to any class of gross income, determined in a manner consistent with the rules set forth in § 1.861-8.

Treas. Reg. § 1.925(a)-1T(c)(6)(iii)(D) (emphasis added).

Treas. Reg. § 1.861-8 provides rules for determining taxable income from specific sources and activities under operative sections of the Code. Treas. Reg. § 1.861-8(a)(1). The operative sections include, among others, §§ 925 and 994 (regarding the combined taxable income of a FSC and DISC, respectively), and § 904(a) (regarding the overall limitation to the foreign tax credit). Treas. Reg. § 1.861-8 requires taxpayers "to allocate deductions to a class of gross income and, then, if necessary to make the determination required by the operative section of the Code, to apportion deductions within the class of gross income between the statutory grouping of gross income (or among the statutory groupings) and the residual grouping of gross income." Treas. Reg. § 1.861-8(a)(2); see also Treas. Reg. § 1.861-8(a)(3) (regarding class of gross income); Treas. Reg. § 1.861-8(a)(4) (regarding statutory and residual groupings).

Treas. Reg. § 1.861-8(e)(3) provided special rules for the allocation and apportionment of R&E expenses. These rules have

been modified over the years. See, e.g., Treas. Reg. § 1.861-8(e)(3) (1977); Rev. Proc. 92-56, 1992-2 C.B. 409 (1992-93); I.R.C. § 864(f) (1989-91, 1994); Treas. Reg. § 1.861-17 (1995). In 1995, § 1.861-8(e)(3) was modified and moved to § 1.861-17. New Treas. Reg. § 1.861-17 provides allocation and apportionment rules for R&E expenses for taxable years beginning after December 31, 1995, or for taxable years beginning after August 1, 1994, if an election is made. Treas. Reg. § 1.861-17(g) (effective date). Notwithstanding these changes, the rules have remained sufficiently similar so that the changes will not have an effect on the questions addressed in this memorandum.

Section 1.861-17 ordinarily requires taxpayers to allocate R&E expenses to a broad product category using a SIC code at least as broad as three digits. See Treas. Reg. § 1.861-17(a)(2)(i) and (ii). However, if R&E expenses are not clearly identified with any product category, § 1.861-17 requires an allocation to all of the taxpayer's product categories. See Treas. Reg. § 1.861-17(a)(2)(i).

Section 1.861-17 provides a special allocation rule for legally mandated R&E expenses:

Where research and experimentation is undertaken solely to meet legal requirements imposed by a political entity with respect to improvement or marketing of specific products or processes, and the results cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source, the deduction for such research and experimentation shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in subparagraphs (c) and (d) of this section).

Treas. Reg. § 1.861-17(a)(4).

In addition to requiring this special allocation, § 1.861-17 requires taxpayers to make an exclusive apportionment of R&E expenses "[w]here an apportionment based upon geographic sources of income of a deduction for research and experimentation is necessary." Treas. Reg. § 1.861-17(b)(1). To make this exclusive apportionment, the regulations require taxpayers to apportion a fixed percentage of R&E expenses to the geographic source where the research activities were performed. See Treas. Reg. § 1.861-17(b)(i)(i) and (ii). Finally, § 1.861-17 requires

taxpayers to apportion the remainder of the R&E expenses according to the sales method or gross income method. See Treas. Reg. § 1.861-17(c) and (d). The gross income method was used by [REDACTED].

In this case, [REDACTED] did not take into account four categories of R&E expenses for purposes of computing FSC combined taxable income. First, it did not take into account the R&E expenses allocated to U.S. sources under the rules regarding legally mandated expenses. Second, it did not take into account the non-legally mandated R&E expenses to the extent of [REDACTED]'s cost-sharing payment attributable to R&E expenses under § 936(h)(5)(C)(i). Third, it did not take into account the non-legally mandated R&E expenses to the extent of [REDACTED]'s share of the profit-split amount under § 936(h)(5)(C)(ii). Fourth, it did not take into account the R&E expenses apportioned to income not attributable to the sale of export property (on the basis of gross income). As explained below, [REDACTED] made several errors in its computation of combined taxable income.

For purposes of computing combined taxable income, R&E expenses should be apportioned between the statutory grouping of gross income from exports and the residual grouping of all other income. See Treas. Reg. § 1.861-8(f)(1)(iii); Rev. Rul. 86-144, 1986-2 C.B. at 102. Combined taxable income measures the amount of income earned by a FSC and its related supplier from the sale of export property. See Rev. Rul. 86-144, 1986-2 C.B. at 102. Because the sale of export property can generate both foreign source income and U.S. source income, combined taxable income can include both foreign source income and U.S. source income, without diminution of FSC tax benefits. See Id. Thus, for purposes of computing amounts includable in combined taxable income, the geographic sourcing of income is irrelevant. See Rev. Rul. 86-144, 1986-2 C.B. at 102; see also St. Jude Medical, Inc. v. Commissioner, 34 F.3d 1394, 1403 (8th Cir. 1994).

The exclusive apportionment rules under § 1.861-17(b)(1) do not apply for purposes of computing combined taxable income. These rules apply only "[w]here an apportionment based upon geographic sources of income of a deduction for [R&E expenses] is necessary." Treas. Reg. § 1.861-17(b)(1) (emphasis added). Thus, these rules do not apply to the computation of combined taxable income because, as discussed above, the computation is not based on geographic sources. See Rev. Rul. 86-144, 1986-2 C.B. at 102; see also St. Jude Medical, Inc. v. Commissioner, 34 F.3d at 1403. [REDACTED] correctly did not make an exclusive geographic apportionment of R&E expenses when computing combined taxable income for FSC purposes.

On the other hand, the legally mandated rules come into play for purposes of computing combined taxable income. See Treas. Reg. § 1.861-17(a)(4). The legally mandated rules provide that legally mandated R&E expenses "cannot reasonably be expected to generate amounts of gross income (beyond de minimis amounts) outside a single geographic source." Treas. Reg. § 1.861-17(a)(4) (emphasis added). These rules further provide that legally mandated R&E expenses "shall be considered definitely related and therefore allocable only to the grouping (or groupings) of gross income within that geographic source as a class (and apportioned, if necessary, between such groupings as set forth in paragraphs (c) and (d) of this section)." Treas. Reg. § 1.861-17(a)(4).

But unlike the exclusive apportionment rules, which, as the name implies, are rules for apportionment, the legally mandated rules are pre-apportionment rules, i.e., they are special allocation rules. Compare Treas. Reg. § 1.861-17(a) (allocation rules) with Treas. Reg. § 1.861-17(b) (apportionment rules). And unlike the exclusive apportionment rules, the legally mandated rules are not restricted in applicability to situations "[w]here an apportionment based upon geographic sources of income of a deduction for [R&E expenses] is necessary." Treas. Reg. § 1.861-17(b)(1) (emphasis added); cf. Treas. Reg. § 1.861-17(a)(4).

Together, the general allocation rules and the legally mandated allocation rules require a two-step allocation prior to apportionment. See Treas. Reg. § 1.861-17(a)(1), (a)(2), (a)(4). First, the general allocation rules require an allocation of R&E expenses based on product categories. See Treas. Reg. § 1.861-17(a)(1), (a)(2). Next, the legally mandated rules require another allocation, within each product category, based on geographic source. See Treas. Reg. § 1.861-17(a)(4). After the two-step allocation, the apportionment rules require that the R&E expenses be apportioned between the statutory grouping of gross income from exports and the residual grouping of all other income. See Treas. Reg. § 1.861-17(c) and (d); Rev. Rul. 86-144, 1986-2 C.B. at 102.

In this case, [REDACTED] allocated R&E expenses legally mandated by the United States only to the U.S. source residual grouping (gross income not from the sale of export property). This was incorrect. Those expenses should also have been allocated to U.S. source foreign trade income. Accordingly, [REDACTED] inflated combined taxable income for FSC purposes with regard to its U.S. source foreign trade income.

A Cost-Sharing Payment Under § 936(h)(5)(C)(I) Proportionately Reduces the Amount of All Types of R&E Expenses To Be Included in the Computation of Combined Taxable Income for FSC Purposes. But the R&E Expenses To Be Included in the Computation of Combined Taxable Income Are Not Reduced by the R&E Expenses Included in the Computation of the Profit-Split Amount Under § 936(h)(5)(C)(II).

██████████ excluded two other categories of R&E expenses from the computation of combined taxable income. Both categories of expenses were attributable to the development and use of income-generating intangible property by ██████████ and ██████████. Regarding category one, ██████████ excluded the non-legally mandated R&E expenses to the extent included in ██████████'s cost-sharing payment under § 936(h)(5)(C)(i). ██████████ did not similarly reduce the legally mandated expenses.

For purposes of the allocation and apportionment rules, the R&E expenses to be allocated and apportioned are reduced by the amount of the R&E expenses included in the cost-sharing amount (determined under § 936(h)(5)(C)(i)). See Treas. Reg. § 1.861-17(a)(3)(i)(B). Section 936(h)(5)(C)(i) provides that a § 936 corporation "must make a payment for its share of [R&E expenses] which is paid or accrued by the affiliated group during the taxable year." Section 936(h)(5)(C)(i) applies to all R&E expenses, not just non-legally mandated expenses. See I.R.C. § 936(h)(5)(C)(i); see also I.R.C. § 936(h)(5)(C)(i)(IV)(a) (cost-sharing payment not income but rather a reduction of otherwise allowable deductions). This means that all types of R&E expenses are reduced equally for purposes of the recipient's deductions and for purposes of the allocation and apportionment rules. See Id.; Treas. Reg. § 1.861-17(a)(3)(i)(B).

In this case, ██████████ received a cost-sharing payment from ██████████ and reduced only non-legally mandated R&E expenses for allocation and apportionment purposes. In doing this, it correctly reduced R&E expenses to the extent included in the cost-sharing payment, but it erred in not reducing both legally mandated and non-legally mandated expenses in relative proportion to each type of expense.

Regarding category two, ██████████ excluded the non-legally mandated R&E expenses included in the computation of the profit-split amount under § 936(h)(5)(C)(ii) to the extent of ██████████'s share of the profit-split amount. However, unlike the cost-sharing payment, the profit split-amount is treated not as a reduction of expenses but instead as an increase to income. See

I.R.C. § 936(h)(5)(C)(ii)(III); Treas. Reg. § 1.861-17(a)(3).

██████████ had no authority for excluding the non-legally mandated expenses included in the computation of the profit-split amount from the computation of combined taxable income.

Combined Taxable Income Computed Under § 925(a)(2) Is Not Modified Prior To Applying the Rules Under § 927(e)(1).

Section 904 limits the amount of the foreign tax credit. See I.R.C. § 904(a); see also I.R.C. § 904(d) (applied by separate baskets of income). Under § 904, the foreign tax credit may not exceed the same proportion of the tax against which such credit is taken which the taxpayer's foreign source income bears to worldwide income. See I.R.C. 904(a).

Section 927 provides limits on the amount of foreign source income a related supplier can receive on the export property sold by the FSC. As set forth below, that section provides that the foreign source income shall not exceed the amount that would result if the corresponding DISC pricing rule applied.

Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

I.R.C. § 927(e)(1).

The regulations, proposed in 1987 and adopted in 1998, provide that "[c]ombined taxable income for purposes of section 994(a)(2) shall be deemed to be an amount equal to the combined taxable income for purposes of section 925(a)(2) arising from the transaction." Treas. Reg. § 1.927(e)-1(a)(3)(i)(C). Under the DSC and FSC pricing rules, combined taxable income is computed in the same manner. See Treas. Reg. § 1.927(e)-(1)(b), example 1(ii).

In this case, ██████████ increased its combined taxable income from the sale of export property before applying the limitation under § 927(e)(1) and thereby inflated its foreign source income. To increase its combined taxable income, ██████████ made an exclusive geographic apportionment of R&E expenses to income from the sale of non-export property. Instead, ██████████

should have used combined taxable income, as computed under § 925(a)(2), in applying the rules under § 927(e)(1). See Treas. Reg. §§ 1.927(e)-1(a)(1)-(3) and 1.927(e)-(1)(b).

R&E Expenses Must Be Allocated and Apportioned on the Basis of SIC Codes for FSC and Foreign Tax Credit Purposes if the Expenses Can Be Clearly Identified with a SIC Code.

For § 936 purposes, [REDACTED] allocated and apportioned R&E expenses according to SIC codes for [REDACTED] through [REDACTED]. For FSC and foreign tax credit purposes, it allocated and apportioned R&E expenses according to SIC codes for [REDACTED] but not for [REDACTED] and [REDACTED].

Section 1.861-8(e)(3)(i)(A) requires taxpayers to allocate and apportion R&E expenses on the basis of a SIC code unless the expenses are not clearly identified with a SIC code. In this case, [REDACTED] acknowledged a factual relationship between the R&E expenses and a SIC code when it allocated and apportioned such expenses on the basis of a SIC code for purposes of § 936. Thus, unless it can show a similar factual relationship does not exist for [REDACTED] and [REDACTED], [REDACTED] was required to allocate and apportion R&E expenses by SIC code for purposes of computing combined taxable income under § 925(a)(2) and for purposes of computing the foreign tax credit limitation under § 904(a). See Treas. Reg. § 1.861-8(e)(3)(i)(A).

We have coordinated this advice with Industry Counsel ([REDACTED]). For questions regarding this memorandum, please contact William Derick at (312) 886-9225 extension 318.

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